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SERVICE DATE - AUGUST 1, 2003

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-33 (Sub-No. 187X)

UNION PACIFIC RAILROAD COMPANY—ABANDONMENT EXEMPTION—IN BOONE AND DALLAS COUNTIES, IA

Decided: July 30, 2003

The Iowa Department of Transportation (IDOT) asks the Board to modify its prior decision requiring the Union Pacific Railroad Company (UP) to keep track in place until the 180-day period to negotiate an acquisition of the line for public use expires. IDOT fears that the track will remain in place indefinitely if the Board were to extend that negotiating period. Because the statute limits the public use condition to 180 days, it is not subject to extension. Accordingly, we will deny IDOT's request to modify that decision. The 180-day period expires on August 11, 2003, at which time the track structure may be removed.

BACKGROUND

By a decision and notice of interim trail use or abandonment (NITU) served on January 13, 2003 (January 13, 2003 decision), the Board granted UP an exemption under 49 U.S.C. 10502 from the prior approval requirements of 49 U.S.C. 10903 to abandon a 12.2-mile line of railroad known as the Ankeny Subdivision, extending from milepost 341.1 near Slater to the end of the line at milepost 353.5 near Woodward (Equation $346.4=346.6$) in Boone and Dallas Counties, IA, subject to trail use, public use, environmental and standard employee protective conditions. The exemption became effective on February 12, 2003.

The January 13, 2003 decision authorized a 180-day period sought by the Iowa Natural Heritage Foundation (INHF) on behalf of the Boone and Dallas County Conservation Boards, the City of Perry, and the Iowa Trails Council to negotiate a public use agreement, an interim trail use agreement, or both, with UP for the right-of-way involved in this proceeding. As part of the public use condition, the decision also required UP to leave intact all of the right-of-way, including the tracks, ties and signal equipment (except for public use on reasonable terms), and bridges, trestle, culverts, and tunnels for a period of 180 days from the effective date of the decision, to enable any state or local government agency or any other interested person to negotiate the acquisition of the line for public use. The negotiating period is scheduled to expire on August 11, 2003.

On February 24, 2003, IDOT filed a request for modification of the January 13, 2003 decision to allow the removal of the tracks and ties at the rail/highway at-grade crossings for surface repair of the involved highways. IDOT expresses concern that the 180-day negotiating period will be subject to numerous extensions. IDOT also states that, if any rail traffic returns to the line through negotiations for public use or through the provisions of an offer of financial assistance,¹ it will restore the crossings. On March 18, 2003, North American Railcar Operators (NARO) filed a response opposing IDOT's request.

On June 5, 2003, UP filed its reply. UP points out that IDOT and NARO's letters were filed after the deadlines to stay any action or to reopen this proceeding. Therefore, IDOT's request to modify the January 13, 2003 decision was not filed within the deadlines established by the Board in this proceeding.

UP states further that it stands ready to continue to negotiate with any party concerning acquisition of the line for public use. If an acceptable offer supported by adequate funding is not made to UP by the end of the 180-day public use period, however, UP says it expects to abandon and salvage the line, including all of the at-grade crossings that are of concern to IDOT. And UP points out that, after the 180-day public use period has ended, the permissible period for interim trail use will be the only avenue remaining for continued negotiations concerning acquisition of the line.

On June 24, 2003, INHF filed a further response. INHF states that it is continuing to negotiate for the preservation of the line for both rail and trail use and requests that IDOT wait until the end of the first 180-day NITU negotiating period before removing any of the rail crossings. INHF states that, if it seeks an extension of the negotiation period under the NITU, it will not object to removal of the crossings by IDOT at that time.

DISCUSSION AND CONCLUSIONS

IDOT's concerns appear to be based on its perceived potential for numerous extensions of the negotiating period for acquisition of the line under the public use condition. That is the condition that provided for the track to remain intact. The plain language of the statute, however, limits a public use condition to 180 days. See 49 U.S.C. 10905. As noted, the public use condition imposed here ends on August 11, 2003. UP indicates that it will remove the track at the crossings if it does not sell the line by the end of the 180-day public use condition, and INHF does not object. Under these circumstances, and given the short amount of time before the public use condition ends, IDOT's request for modification of the January 13, 2003 decision is unnecessary as a practical matter and will not be granted.

¹ Offers of financial assistance were due by January 23, 2003, and none was filed.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. IDOT's request to modify the January 13, 2003 decision is denied.
2. This decision is effective on the date of service.

By the Board, Chairman Nober.

Vernon A. Williams
Secretary